

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 5350

IN THE MATTER OF:

Served June 2, 1998

Application to Transfer)	Case No. AP-97-47
Certificate No. 309 from BACH)	
VU, Trading as AFFORDABLE)	
AIRPORT CHARTER, to AFFORDABLE)	
AIRPORT CHARTER, INC.)	
Investigation of Unauthorized)	Case No. MP-97-76
Operations of AFFORDABLE AIRPORT)	
CHARTER, INC., and Affiliation)	
with BACH VU, Trading as)	
AFFORDABLE AIRPORT CHARTER,)	
WMATC No. 309)	

By application accepted for filing September 8, 1997, Bach Vu, a sole proprietor trading as Affordable Airport Charter, (Vu), WMATC Carrier No. 309, and Affordable Airport Charter, Inc., (AACI), a Maryland corporation, (collectively applicants), seek Commission approval to transfer Certificate of Authority No. 309 from Vu to AACI. The application describes Vu as an officer and fifty-percent shareholder of AACI.

The application was filed after our investigation was initiated on the basis of several filings made by respondents in early 1997 indicating that AACI had been transporting passengers for hire in the Metropolitan District without a certificate of authority.¹

The ensuing investigation led to our preliminary finding that AACI began transporting passengers for hire in the Metropolitan District as early as January 3, 1997.² The record at that time, however, did not indicate when AACI ceased operations or whether AACI profited from those operations. AACI has since answered those questions at our direction.

These proceedings have been consolidated because the question of whether AACI violated the Compact during the period under investigation is relevant to a determination of whether AACI is fit to serve as a WMATC carrier.

¹ Order No. 5178 (Aug. 5, 1997).

² Order No. 5276 (Feb. 17, 1998).

I. The Investigation

Article XIII, Section 6(f), provides that a person who knowingly and willfully violates a provision of the Compact shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation and that each day of the violation constitutes a separate violation.

The civil forfeiture provision of the Compact serves at least two functions: deterrence of future violations and disgorgement of unjust profits.³ Accordingly, one of the factors we take into consideration when determining the appropriate size of a forfeiture is whether the carrier profited from its misdeeds.⁴

As noted above, we previously found that AACI knowingly and willfully violated the Compact by transporting passengers for hire in the Metropolitan District beginning January 3, 1997. Those operations are now admitted to have continued throughout the year⁵ and are reported to have resulted in a net loss.⁶

We will assess a civil forfeiture against respondents in the amount of \$250 per day⁷ for 363 days, for a total of \$90,750. We will suspend all but \$5,500, in recognition of AACI's net loss in 1997.⁸ Failure to pay the net forfeiture in timely fashion shall result in reinstatement of the full \$90,750.

³ DD Enters., Inc., t/a Beltway Transp. Serv., v. Reston Limo. Serv., No. FC-93-01, Order No. 4226 (Dec. 20, 1993).

⁴ See In re Bill Appell, t/a Personal Pace Tours/Tech Tours Wash., No. MP-95-18, Order No. 4762 (Feb. 8, 1996) (forfeiture reduced in light of negligible profit); In re Regency Limo. Serv., Inc., No. MP-94-01, Order No. 4323 (June 21, 1994) (forfeiture waived for insolvency); In re Mustang Tours, Inc., No. MP-93-42, Order No. 4224 (Dec. 15, 1993) (forfeiture reduced in light of negligible profit); In re Madison Limo. Serv., Inc., No. AP-91-39, Order No. 3891 (Feb. 24, 1992) (forfeiture reduced in absence of evidence of unjust enrichment).

⁵ Statement of Rufus Akintimehin, ¶ 7.

⁶ See AACI's Federal Income Tax Return for 1997 (showing net loss of \$3,302).

⁷ See Order No. 4762 (penalty for operating without authority assessed at \$250 per day); Order No. 4224 (same).

⁸ See Order No. 4762 (forfeiture reduced in light of negligible profit); Order No. 4224 (same).

II. The Application

Under Article XI, Section 11(a), of the Compact, the Commission may approve the transfer of a certificate of authority if transferring the certificate is consistent with the public interest. The public interest analysis includes a determination of the transferee's regulatory compliance fitness.⁹

When the current investigation was initiated, AACI was ordered to refrain from, and/or cease and desist from, transporting passengers for hire between points in the Metropolitan District unless and until otherwise ordered by the Commission.¹⁰ The record now shows that AACI did not heed that order. AACI's continued transportation of passengers in the Metropolitan District in the face of a Commission cease and desist order renders it unfit for WMATC operating authority.

The Commission accordingly finds that the transfer of Certificate No. 309 to AACI would not be consistent with the public interest.

III. Revocation of Certificate No. 309

Article XI, Section 10(c), of the Compact provides that the Commission, after notice and hearing, may revoke a certificate of authority for willful failure to comply with a provision of the Compact or an order of the Commission. "Willful" does not mean with evil purpose or criminal intent; rather, it describes conduct marked by careless disregard.¹¹

Article XII, Section 3(a)(iii), of the Compact states that a carrier shall obtain Commission approval to acquire control of another carrier through ownership of its stock or other means, if the other carrier operates in the Metropolitan District.

⁹ In re Shaw Bus Serv., Inc., & American Coach Lines, Inc., No. AP-88-09, Order No. 3224 (Aug. 25, 1988); In re Highview Bus Serv., Inc., & Courtesy Bus Rental Sys., Inc., No. AP-78-47, Order No. 1988 (Apr. 25, 1979).

¹⁰ Order No. 5178 at 2.

¹¹ In re All-Star Presidential, LLC, & Presidential Coach Co., & Presidential Limo. Serv., Inc., No. MP-95-82, Order No. 4961 (Oct. 29, 1996).

The record shows that Bach Vu, Carrier No. 309, acquired control of AACI on August 9, 1996,¹² and that AACI is a carrier operating in the Metropolitan District.¹³

A WMATC carrier is charged with the knowledge that acquisition of control within the meaning of Article XII, Section 3, requires prior Commission approval.¹⁴ Consequently, we find that Bach Vu willfully violated the Compact when he acquired control of AACI.

Bach Vu compounded that violation by permitting AACI to operate in the Metropolitan District without a certificate of authority in violation of Article XI, Section 6. These violations became flagrant when Bach Vu permitted AACI to continue operating in the Metropolitan District after August 5, 1997, in defiance of Commission Order No. 5178.

Order No. 5178 warned Bach Vu that failure to comply with the directives therein would result in the automatic suspension of his certificate and that he would have thirty days thereafter to show cause why his certificate should not be revoked. That thirty days began running on or about August 6, 1997, when Bach Vu failed to restrain AACI from operating in the Metropolitan District. Nevertheless, to ensure proper notice and opportunity for hearing, we shall extend the show cause period to thirty days from the date this order is issued.

Respondents are reminded that AACI remains constrained by the cease-and-desist provision of Order No. 5178. Continued operations by AACI will result in additional sanctions.

¹² AACI's articles of incorporation were approved by the Maryland State Department of Assessments and Taxation on August 9, 1996. The articles name Bach Vu as one of AACI's directors. The record indicates that Bach Vu has been an officer and 50 percent shareholder since AACI's inception.

¹³ A carrier is defined as a person who engages in the transportation of passengers by motor vehicle or other form or means of conveyance for hire. Compact, tit. II, art. XI, § 4(a). AACI's articles state that one of the purposes for which AACI was formed is to "engage in the business of for-hire transportation of passengers between points in the Washington Metropolitan Area Transit District." AACI's record of operations in the Metropolitan District confirms its status.

¹⁴ In re Great American Tours, Inc., & The Airport Connection, Inc. II, & Airport Baggage Carriers, Inc., No. MP-96-54, Order No. 5065 (Apr. 24, 1997); Order No. 4961.

THEREFORE, IT IS ORDERED:

1. That the application to transfer Certificate of Authority No. 309 from Bach Vu to AACI is denied.

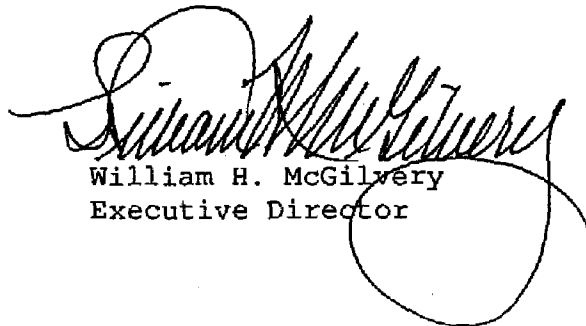
2. That respondents shall pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashiers check, the sum of five thousand five hundred dollars (\$5,500), for knowing and willful violations of the Compact.

3. That the full civil forfeiture of \$90,750 shall stand reinstated and become immediately due and payable upon respondents' failure to timely pay the net forfeiture of \$5,500.

4. That Bach Vu shall have thirty days from the date this order is issued to show cause why Certificate of Authority No. 309 should not be revoked.

5. That Bach Vu may file within 15 days from the date of this order a request for oral hearing showing good cause to require such a hearing, including a description of the evidence to be adduced and an explanation of why such evidence cannot be adduced without an oral hearing.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS ALEXANDER, LIGON, AND MILLER:



William H. McGilvery
Executive Director